



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

August 23, 1950.

Hon. C. Land
County Attorney
Hall County
Memphis, Texas

Opinion No. V-1096.

Re: Operation and effect of
an amendatory act that
re-enacts and publishes
an amended article of the
Revised Civil Statutes.

Dear Sir:

You have requested an opinion as to whether a certain provision of Article 2943, Revised Civil Statutes, as amended in 1937 [Acts 45th Leg., R.S., Ch. 295, p. 591], was repealed when it was omitted by an amendment of that Article, as amended in 1937, in 1945, [Acts 49th Leg., R.S., 1945, Ch. 87, p. 1287].

Article 2943 and all amendments thereto provided for the compensation of judges and clerks of general and special elections. This Article, as it appeared in the Revised Civil Statutes and in the amendment of 1937, contained a provision which read as follows:

"The Judge who delivers the returns of an election immediately after the votes have been counted shall be paid Two Dollars (\$2) for that service, provided the polling place of his precinct is at least two (2) miles from the courthouse, and provided also he shall make returns of all election supplies not used when he makes return of the election." (Emphasis added).

All the provisions of the above quotation were brought forward in the Amendatory Act of 1945, except the one emphasized by us. You want to know whether the provision so omitted was thereby repealed.

For the purpose of this opinion, it will suffice to quote only the first section of each of the amendatory acts mentioned in the first paragraphs of this opinion.

Section 1 of the Amendatory Act of 1937 reads as follows:

Hon. C. Land, Page 2, (V-1096).

"Article 2943, Revised Civil Statutes, State of Texas, 1925, be and the same is hereby amended to hereafter read as follows:
. . ."

Section 1 of the Amendatory Act of 1945 reads as follows:

"That Article 2943 of the Revised Civil Statutes of the State of Texas, as amended by the Acts of 1937, 45th Legislature, page 591, Chapter 295, be and the same is hereby amended so as to read as follows: . . ."

In International & Great Northern Ry. Co. v. Bland, 181 S.W. 504 (Tex. Civ. App. 1915), at page 506, the Court said:

"It is a well-known rule of construction that when the Legislature amends an article of the Revised Statutes by referring to it by a number, as in this instance, declaring that it 'shall hereafter read as follows,' the article as amended is intended by the Legislature to take the place in the Revised Statutes formerly occupied by the superseded article. In fact the language quoted permits of no other construction."

It is stated in Volume 39 of Texas Jurisprudence, at pages 127, 128 and 147:

"The operation and effect of an amendatory act depend upon its character and scope. Obviously an act that re-enacts and publishes a prior law as a whole supersedes the original, although the actual changes effected are of a minor character, and although the construction of the new act may not differ materially from that of the old. Likewise, when a particular article or section is amended, by re-enactment and publication in accordance with the constitutional requirement¹, the provision as amended becomes

^{1/} "No law shall be revived or amended by reference to its title; but in such case the Act revived or the section or sections amended, shall be re-enacted and published at length." Tex. Const. Art. III, Sec. 36.

a part of the original statute and takes the place of the provision amended, except in so far as it may be preserved by a saving clause. . . . An amendment operates to repeal any provision of the original act or section that is omitted."

"An amendatory act that recasts the language of an existing statute operates to repeal any omitted provision of the original."

The constitutional requirement that a statute must be amended by re-enactment and publication at length was observed and followed by the Legislature in each of the amendatory acts under consideration. Therefore, the rules of construction heretofore cited are clearly applicable to each of them, and, when so applied, the ultimate result is that Article 2943, as amended in 1945, is now the existing statute, and any provision, including the one here under consideration, contained in the original Article or in the amendment thereof by the Act of 1937, and not now included therein, has been repealed.

SUMMARY

A provision contained in Article 2943, Revised Civil Statutes, 1925, as amended by the Forty-Fifth Legislature, Regular Session, 1937, Chapter 295, page 591, which was omitted in the subsequent amendment thereof by the Forty-Ninth Legislature, 1945, Chapter 87, page 128, was thereby repealed. I.&G.N. Ry. v. Bland, 181 S.W. 504 (Tex. Civ. App. 1915); 39 Tex. Jur. 126, 127, 147, Statutes, Secs. 64, 79.

APPROVED:

C. K. Richards
Appellate Division

Everett Hutchinson
Executive Assistant

Charles D. Mathews
First Assistant

Yours very truly,

PRICE DANIEL
Attorney General

Bruce W. Bryant
By
Bruce W. Bryant
Assistant